

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petitions:** 90-018-15-1-4-00214-15  
90-018-15-1-4-00215-15  
90-018-15-1-5-00216-15  
90-018-15-1-4-00217-15  
**Petitioner:** Kozy Kourt, Inc.  
**Respondent:** Wells County Assessor  
**Parcels:** 90-04-02-501-033.000-018  
90-04-02-501-033.001-018  
90-04-02-501-032.000-018  
90-04-02-501-009.000-018  
**Assessment Year:** 2015

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

**Procedural History**

1. The Petitioner initiated four 2015 assessment appeals with the Wells County Assessor on June 15, 2015.
2. On October 19, 2015, the Wells County Property Tax Assessment Board of Appeals (PTABOA) issued its determinations lowering the assessments, but not to the level requested by the Petitioner.
3. The Petitioner timely filed four Petitions for Review of Assessment (Form 131s) with the Board electing the Board's small claims procedures.
4. The Board issued notices of hearing on July 27, 2016.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's consolidated administrative hearing on September 7, 2016. She did not inspect the parcels.
6. Jeff Espich appeared for the Petitioner and was sworn as a witness.<sup>1</sup> Attorney Heather Scheel appeared for the Respondent. Nexus Consultant Anthony Garrison was sworn as a witness for the Respondent.

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<sup>1</sup> Mr. Espich signed the Form 131s as the President of Kozy Kourt, Inc.

## Facts

7. The properties under appeal “previously” included mobile homes and were part of a mobile home park. As of March 1, 2015, the properties under appeal were described as follows:
- Parcel 90-04-02-501-033.000-018, located at 5966 North Lincoln Street was assessed as a 139 foot by 158 foot residential lot including a detached garage and a car shed.
  - Parcel 90-04-02-501-033.001-018, located at 1139 West Hancock Street was assessed as a 132 foot by 158 foot vacant residential lot.
  - Parcel 90-04-02-501-032.000-018, located at 5969 North Lincoln Street was assessed as a 174 foot by 153 foot vacant residential lot.
  - Parcel 90-04-02-501-009.000-018, located at 1119 West Hancock Street was assessed as an 83 foot by 90 foot vacant residential lot.
8. The PTABOA determined the following assessed values:

| <b>Parcel</b>            | <b>Land</b> | <b>Improvements</b> | <b>Total</b> |
|--------------------------|-------------|---------------------|--------------|
| 90-04-02-501-033.000-018 | \$9,100     | \$5,800             | \$14,900     |
| 90-04-02-501-033.001-018 | \$8,600     | \$0                 | \$8,600      |
| 90-04-02-501-032.000-018 | \$11,200    | \$0                 | \$11,200     |
| 90-04-02-501-009.000-018 | \$4,300     | \$0                 | \$4,300      |

9. The Petitioner requested the following assessed values on its Form 131s:

| <b>Parcel</b>            | <b>Land</b> | <b>Improvements</b> | <b>Total</b> |
|--------------------------|-------------|---------------------|--------------|
| 90-04-02-501-033.000-018 | \$2,000     | \$4,500             | \$6,500      |
| 90-04-02-501-033.001-018 | \$2,000     | \$0                 | \$2,000      |
| 90-04-02-501-032.000-018 | \$2,000     | \$0                 | \$2,000      |
| 90-04-02-501-009.000-018 | \$1,000     | \$0                 | \$1,000      |

## Record

10. The official record for this matter is made up of the following:
- a) Form 131s with attachments,
  - b) A digital recording of the hearing,
  - c) Exhibits:

Petitioner Exhibit 1A: “Reason for Petition-Request-Need for Change,”  
Petitioner Exhibit 2A: Summary of aerial maps,

Petitioner Exhibit 2B: Aerial map of Uniondale with subject parcels highlighted in yellow,

Petitioner Exhibit 2C: Aerial map of the subject parcels as they existed on March 1, 2015,

Petitioner Exhibit 2D: 2016 aerial map of the subject parcels after the mobile home pads had been removed,

Petitioner Exhibit 3A: “Problems Unique to the Parcels,”

Petitioner Exhibit 3B: Eight photographs of the subject parcels underwater,

Petitioner Exhibit 3C: Eight photographs of concrete pads situated on the subject parcels,

Petitioner Exhibit 4A: “Small Town Indiana—No Market Value/Demand—No New Homes,”

Petitioner Exhibit 4B: “Small Communities of Wells County, drive-by estimates,”

Petitioner Exhibit 4C: Respondent’s spreadsheet of sales and proposed assessed values from the PTABOA hearing,

Petitioner Exhibit 5A: “Questions, Mistakes and Concerns,”

Petitioner Exhibit 5B: “Erratic Proposed Parcel AV’s,”

Petitioner Exhibit 5C: Letter from Mr. Rick Smith to Mr. Espich dated July 16, 2015,

Petitioner Exhibit 5D: Letter to Mr. Rick Smith from Mr. Espich July 28, 2015,

Petitioner Exhibit 5E: Beacon property data for 1139 West Hancock Street,

Petitioner Exhibit 5F: Beacon property data for 500 West in Rockford,

Petitioner Exhibit 5G: Notice of Assessment (Form 11) for 1119 West Hancock Street, dated June 13, 2015,

Petitioner Exhibit 5H: Form 11s for 1119 West Hancock Street, 5969 North Lincoln, 5966 North Lincoln, and 1139 West Hancock Street, all dated June 13, 2015,

Petitioner Exhibit 5I: Notifications of Final Assessments (Form 115s) for 1119 West Hancock, 5969 North Lincoln, 5966 North Lincoln, and 1139 West Hancock,

Petitioner Exhibit 6A: Coversheet describing the Petitioner’s appraisal reports,

Petitioner Exhibit 6B: Appraisal of 1139 West Hancock performed by James E. Oswalt with an effective date of April 29, 2016,

Petitioner Exhibit 6C: Appraisal of 5966 North Lincoln performed by James E. Oswalt with an effective date of April 29, 2016,

Petitioner Exhibit 6D: Appraisal of 1119 West Hancock performed by James E. Oswalt with an effective date of April 29, 2016,

Petitioner Exhibit 6E: Appraisal of the 0.32 acre site located at 5969 North Lincoln performed by James E. Oswalt with an effective date of April 29, 2016,

Petitioner Exhibit 6F: Appraisal of the 0.41 acre site located at 5969 North Lincoln performed by James E. Oswalt with an effective date of April 29, 2016.

- Respondent Exhibit A: Form 131s with attachments,  
Respondent Exhibit B: 2015 property record cards,  
Respondent Exhibit C: Comparable sales analysis,  
Respondent Exhibit D: Property record cards, sales disclosure forms, and  
“Gateway sales data” for the five comparable properties  
utilized in the Respondent’s sales comparison analysis,  
Respondent Exhibit E: A flood map of the subject properties area from the  
Department of Natural Resources Indiana Floodplain  
Information Portal,  
Respondent Exhibit F: Aerial map of Uniondale,  
Respondent Rebuttal Exhibit G: Sales disclosure form for the property located at  
Meridian Road,  
Respondent Rebuttal Exhibit H: Sales disclosure form for the property located at 56  
West 1<sup>st</sup> Street in Poneto,  
Respondent Rebuttal Exhibit I: Sales disclosure form for the property located at  
3574 East 1<sup>st</sup> Street in Petroleum,  
Respondent Rebuttal Exhibit J: *Albert & Kevina Schumaker v. Bartholomew  
County Assessor*, Ind. Bd. of Tax Rev. pet. no. 03-  
005-11-1-5-00009, (April 20, 2016),  
Respondent Rebuttal Exhibit K: “Evaluating Sales Information” excerpt from the  
Real Property Assessment Guidelines, Chapter 2 at  
12, 13.
- Board Exhibit A: Form 131s with attachments,  
Board Exhibit B: Notice of hearing dated July 27, 2016,  
Board Exhibit C: Hearing sign-in sheet,  
Board Exhibit D: Notice of Appearance for Heather Scheel,  
Board Exhibit E: Petitioner’s request to consolidate hearings,  
Board Exhibit F: Board’s response to the Petitioner’s consolidation request,  
Board Exhibit G: Respondent’s response to the consolidation request.

d) These Findings and Conclusions.

### **Objections**

11. Ms. Scheel objected to Mr. Espich’s discussion regarding the Assessor’s various offers to settle these appeals. Ms. Scheel argued these offers are not admissible to prove value and are not “normally talked about in these types of settings.”<sup>2</sup>
12. In response, Mr. Espich stated that he would not discuss the settlement offers, but instead would focus on the PTABOA’s decision to lower the various assessments. The ALJ took the objection under advisement.

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<sup>2</sup> Ms. Scheel cited *Dep’t of Local Government Finance v. Commonwealth Edison*, 820 N.E.2d 1222 (Ind. 2005) in support of her position.

13. To the extent Mr. Espich did discuss the settlement offers, the Board sustains Ms. Scheel's objection. Parties in Indiana are encouraged to engage in settlement negotiations. Indiana's evidence rules also prohibit the use of settlement terms or even settlement negotiations to prove liability for or invalidity of a claim or its amount. 1228 Ind. Evidence Rule 408. Additionally, the Indiana Tax Court has pointed out a strong policy justification for denying settlements' precedential effect in property tax cases, "to allow the taxpayers to use the settlement would have a chilling effect on the incentive of all assessing officials to resolve cases outside the courtroom." *Boehning v. State Bd. of Tax Comm'rs*, 763 N.E.2d 502, 505 (Ind. Tax Ct. 2001).
14. Ms. Scheel objected to Petitioner's Exhibits 6B, 6C, 6D, 6E, and 6F as hearsay. She argued that the taxpayer failed to open the appraisal reports and failed to point to what the market value of the properties should be. Mr. Espich did not offer a response. The ALJ took the objection under advisement.
15. "Hearsay" is a statement, other than one made while testifying, that is offered to prove the truth of the matter asserted. Such a statement can be either oral or written. (Ind. R. Evid. 801(c)). The Board's procedural rules specifically address hearsay evidence:

Hearsay evidence, as defined by the Indiana Rules of Evidence (Rule 801), may be admitted. If not objected to, the hearsay evidence may form the basis for a determination. However, if the evidence is properly objected to and does not fall within a recognized exception to the hearsay rule, the resulting determination may not be based solely upon the hearsay evidence.

52 IAC 3-1-5(b). The word "may" is discretionary, not mandatory. In other words, the Board can permit hearsay evidence to be entered in the record, but it is not required to allow it.

16. Petitioner's Exhibits 6B, 6C, 6D, 6E, and 6F are hearsay. However, effective July 1, 2015, Ind. Code § 6-1.1-15-4 was amended to include an exception to the hearsay rule:

(p) At the hearing under this section, the Indiana board shall admit into evidence an appraisal report, prepared by an appraiser, unless the appraisal report is ruled inadmissible on grounds besides a hearsay objection. This exception to the hearsay rule shall not be construed to limit the discretion of the Indiana board, as trier of fact, to review the probative value of an appraisal report.

Ind. Code § 6-1.1-15-4(p). Accordingly, Ms. Scheel's objection is overruled and Petitioner's Exhibits 6B, 6C, 6D, 6E, and 6F are admitted.

17. Ms. Scheel also objected to Mr. Espich's testimony regarding lake front property. She argued Mr. Espich was "telling a story rather than testifying." She further argued the parties "were not at the appeal to discuss lake property." In response, Mr. Espich claimed

he was referring to lake properties to establish a lack of consistency in the assessments and the Respondent's unsupported land-to-sales-price ratios. The ALJ took the objection under advisement.

18. Ms. Scheel's objection goes to the weight of the testimony rather than its admissibility. Therefore, her objection is overruled.
19. Finally, Ms. Scheel moved to dismiss after Mr. Espich presented his case. Ms. Scheel argued the Petitioner failed to make a prima facie case and only offered conclusory statements. Mr. Espich did not offer a response. The ALJ took the motion under advisement.
20. Ms. Scheel did not cite to, nor can the Board find, any explicit authority in our procedural rules for her motion to dismiss, which is basically a request for judgment on the evidence. The Indiana Rules of Trial Procedure, however, contemplate such motions. Of course, the Board, and not the ALJ, ultimately decides whether a party made a prima facie case. A motion to dismiss does not alter the ALJ's role. Thus, if the ALJ were to grant the motion, it would only be a preliminary determination. Procedurally, a motion to dismiss only functions as a legal argument. As practical matter, an ALJ's grant of a dismissal would merely foreclose the Respondent from presenting its own case in chief, a dubious strategic tactic. The Board finds the dismissal should not have been granted, and resolves the matter on the merits.
21. Mr. Espich also made several objections. First, he objected to the inclusion of Respondent's Rebuttal Exhibits G, H, and I. He argued that he had "no forewarning of the Respondent's rebuttal exhibits prior to the hearing." Mr. Espich went on to argue that his compliance with the Respondent's request for his evidence prior to the hearing opened the door for the Respondent to "use the evidence he shared against him." In response, Ms. Scheel argued that she did not have any knowledge of the flaws in the appraisal reports until they were exchanged five days prior to the hearing. The ALJ took the objection under advisement.
22. While the Board's procedural rules do not specifically exempt rebuttal evidence from the exchange requirements, the Board does recognize a general exception for rebuttal evidence. Rebuttal evidence is evidence offered to explain, contradict, or disprove the evidence presented by an adverse party. *McCullough v. Archbold Ladder Co.*, 605 N.E.2d 175, 180 (Ind. 1993). The Board may exclude evidence offered as rebuttal that should have been presented in the party's case-in-chief, but is not required to do so. *Id.* Here, the Board is willing to make an exception with regard to Respondent's Rebuttal Exhibits G, H, and I as they are sales disclosures specifically offered to challenge the validity of the Petitioner's appraisals. Accordingly, Mr. Espich's objection is overruled.
23. Mr. Espich also objected to Ms. Scheel's statements regarding "the distance of the comparable properties" utilized in the Petitioner's appraisals. In response Ms. Scheel argued that without the appraiser present to explain his adjustments, the Board should not accept the reports. The ALJ took the objection under advisement.

24. The Petitioner's objection goes to the weight of Ms. Scheel's argument rather than its admissibility. Therefore, the Board overrules the Petitioner's objection.

### Contentions

25. Summary of the Petitioner's case:

- a) The assessments of the various properties exceed their market value. The values of vacant parcels in "small towns like Uniondale are declining rapidly." The assessments do not accurately reflect the changing values within these small communities. Changes need to be made in "statewide assessment practices" of small-town vacant parcels. As was the case with "big box" stores, "changing times and conditions create changing values and demand a changed assessment policy." *Espich argument; Pet'r Ex. 1A.*
- b) There is little to no market demand for vacant land in small communities. Very few new homes are being constructed. The majority of homes in small towns are at least 50 years old, with most in excess of 100 years old. After surveying eleven small towns in Wells County to determine the number of homes built on vacant parcels in the past 50 years, Mr. Espich found three new Habitat for Humanity homes, four modular homes, and one conventional stick-built home. *Espich argument; Pet'r Ex. 4A, 4B.*
- c) Mr. James E. Oswalt, a certified appraiser, prepared five appraisal reports for the properties under appeal with an effective date of April 29, 2016.<sup>3</sup> According to Mr. Oswalt, the combined value for all of the parcels should be \$5,500. *Espich testimony and argument; Pet'r Ex. 1A, 6A, 6B, 6C, 6D, 6E, 6F.*
- d) The properties under appeal suffer from two "unique" problems that negatively affect their market value. In 2015 90% of the parcels were flooded by as much as a foot of water. As the drainage system in Uniondale is over 100 years old, and with the possibility of recurrent flooding, homes should not be built on the lots. Additionally, the existence of "concrete remains" from the former mobile home park "littered" the lots on the assessment date. Mr. Espich has since removed the concrete pads at a cost of approximately \$10,000. *Espich argument; Pet'r Ex. 3A, 3B, 3C.*
- e) The Assessor admitted in a letter to the Petitioner that he lacked sufficient sales of vacant lots in the neighborhood to accurately develop trending. As such, the assessments are unsupported. *Espich argument; Pet'r Ex. 5A, 5C.*

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<sup>3</sup> Mr. Espich presented appraisal reports for five parcels. After he initially filed appeals for the properties in question, he deeded a section of the lot located at 5969 North Lincoln Street to the mobile home owners. Thus, when the appraiser viewed the properties in 2016, there were five parcels of land that encompass the four parcels initially appealed in 2015.

- f) The four parcels were initially assessed at a combined total of \$67,500 on June 13, 2015. After the PTABOA hearing on October 19, 2015, the combined total decreased to \$33,200.<sup>4</sup> *Espich testimony; Pet'r Ex. 5A, 5B.*
- g) In support of the argument that Wells County assessments are inconsistent, Mr. Espich compared the assessments of two residential vacant lots. He noted a large difference in the base rates assessed to two lots located in similar small towns. A lot in Uniondale was assessed at a base rate of \$90 per front foot, while a lot in Rockford was assessed at a base rate of \$35 per front foot. *Espich testimony; Pet'r Ex. 5A, 5E, 5F.*
- h) Mr. Espich also pointed to a “red flag” for the property located at 1119 West Hancock Street. When this property was assessed as a home-site it had a land assessment of \$3,100. However, after the home was razed, the land assessment increased to \$5,700. *Espich testimony; Pet'r Ex. 5A, 5G, 5H.*
- i) In an effort to support the assessment, the Respondent erroneously relied on a sale of a vacant parcel in the town of Rockford. This lot, however, was purchased along with an adjacent home. It is not a “stand-alone vacant lot,” but an extension of the adjacent home’s lawn. As such, it is not comparable to the properties under appeal. *Espich testimony and argument; Pet'r Ex. 4C.*
- j) Additionally, Mr. Espich argues the Respondent’s comparable sales analysis is flawed. First, he questioned what standards were used to develop the 15% land to sales price ratio. Next, Mr. Espich questioned the “wide disparities” between two of the purportedly comparable properties assessed values and sales prices. The first purportedly comparable property was assessed at \$68,300 but sold for \$37,400. The second purportedly comparable property was assessed at \$52,800 but sold for \$26,010. These discrepancies indicate a “complete failure of the assessing system.” *Espich argument (referencing Resp't Ex. C).*

26. Summary of the Respondent’s case:

- a) The properties under appeal are correctly assessed. The assessments were performed in accordance with the rules and guidelines of the Department of Local Government Finance (DLGF). *Scheel argument.*
- b) Here, the burden of proof was on the Petitioner. It was the Petitioner’s duty to walk the Board “through every aspect” of the appeals and “explain why the values deserved to be lowered.” The Petitioner failed to meet that burden. Accordingly, the PTABOA’s determination should be upheld. *Scheel argument.*
- c) In an effort to illustrate how the land assessments were applied, the Respondent’s witness, Mr. Garrison presented property record cards for five residential properties

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<sup>4</sup> Mr. Espich’s calculation of the combined PTABOA’s determination does not include the improvement value of \$5,800 from parcel 90-04-02-501-033.000-018.

that had recently sold along with a sales comparison analysis. Mr. Garrison also alluded to the Real Property Assessment Guidelines regarding land valuation. According to the Guidelines, the allocation method can be used to determine the indicated value of residential land if the sample of vacant land sales is insufficient for a geographic area. Given that was the case here, Mr. Garrison relied on the allocation method. He determined the percentage of each of the comparable properties overall sale prices attributable to the land by determining the land to sale price ratio for each of the five comparable sales. This amount ranged from 7.5% to 18.84% with the median of 15.2%. Four of the five comparable sales utilized were considered “typical” lots. These were 0.232-acre lots assessed at \$5,700, or \$24,600 per acre. Mr. Garrison then applied the \$24,600 per acre rate to the four parcels under appeal. A negative 25% adjustment was made to three of the parcels because they were larger in size. Finally, Mr. Garrison presented the following calculations and assessment comparisons for the four parcels under appeal:

- 5969 North Lincoln Street (parcel 90-04-02-501-032.000-018) measures 0.611 acres. After multiplying \$24,600 by 0.611 this yields a value of approximately \$15,000. Then a negative 25% size adjustment was made yielding a total land value of \$11,300. This parcel is reasonably assessed at \$11,200.
- 5966 North Lincoln (parcel 90-04-02-501-033.000-018) measures 0.504 acres. After multiplying \$24,600 by 0.504 acres, less a negative 25% size adjustment, yields a total land value of \$9,300. This parcel also includes a \$5,800 improvement assessment. According to the allocation method this parcel should be valued at \$15,100. The parcel is currently assessed at \$14,900.
- 1139 West Hancock Street (parcel 90-04-02-501-033.001-018) measures 0.479 acres. After multiplying \$24,600 by 0.479, less a negative 25% size adjustment, this parcel should be valued at \$8,900. Currently it is assessed at \$8,600.
- Finally, 1119 West Hancock Street (parcel 90-04-02-501-009.000-018) measures 0.171 acres. As no size adjustment is necessary here, \$24,600 multiplied by 0.171 yields a land value of \$4,200. This parcel is currently assessed at \$4,300.

According to the allocation method, the subject properties’ land assessments accurately reflect their market value-in-use. In fact, three of the four parcels are currently assessed for less than the analysis indicates. *Garrison testimony; Resp’t Ex. C, D, K.*

- d) No probative weight should be given to the appraisals prepared by Mr. Oswalt. These appraisals are hearsay, and contain several flaws and errors. Mr. Oswalt utilized the same three purportedly comparable properties in all five appraisal reports. Two of

these three properties were tax sales, while the third was purchased by an adjoining landowner. These sales should not be considered valid sales. Additionally, two of the three purportedly comparable properties are located 12 and 16 miles away from the subject properties, yet Mr. Oswalt made no adjustments for location. Mr. Oswalt applied a 600% adjustment to the second comparable sale indicating it is “not a good comparable.” In a recent decision, the Board “threw out” an appraisal report because the appraiser, who was present, could not “mathematically” justify one of her large adjustments.<sup>5</sup> *Scheel argument (referencing Pet’r Ex. 6B, 6C, 6D, 6E, 6F); Resp’t Ex. G, H, I, J.*

- e) With regard to Mr. Espich’s claim that the properties have flooding issues, the appraisal reports indicate the parcels are not located in a floodplain. Furthermore, according to maps from the county’s Geographical Information System (GIS) and from the Indiana Department of Natural Resources, there is no floodplain in Uniondale. *Scheel argument; Resp’t Ex. E, F.*

### **Burden of Proof**

- 27. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass’r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
- 28. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
- 29. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.

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<sup>5</sup> Mr. Scheel was referencing the Board’s decision in *Albert & Kevina Schumaker v. Bartholomew Co. Ass’r*, Ind. Bd. of Tax Rev. Pet. No. 03-005-11-1-5-00009 (April 20, 2016).

30. Here, neither party offered any argument regarding the burden of proof. But according to the property record cards submitted by the Respondent, it appears the assessments for each parcel actually decreased from the prior year's assessment. The Petitioner failed to offer any argument or evidence that the burden should shift to the Respondent. Thus, the burden shifting provisions of Ind. Code § 6-1.1-15-17.2 do not apply, and the burden rests with the Petitioner.

### Analysis

31. The Petitioner failed to establish a prima facie case for reducing the 2015 assessments.
- a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
  - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass'r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For 2015 assessments, the valuation date was March 1, 2015. *See* Ind. Code § 6-1.1-4-4.5(f).
  - c) Here, the Petitioner primarily focused on his own perception that values of vacant parcels located in small towns like Uniondale are declining rapidly, and argued that is not reflected in the assessments. In support of this argument, the Petitioner offered an analysis reflecting the limited number of homes built in Wells County over the last 50 years. The Petitioner concluded there is little or no demand for vacant parcels in small towns, and therefore the subject parcels have little to no value.
  - d) The Board finds that the Petitioner is probably correct in his investigation regarding the general level of demand for vacant parcels in small towns in this region. But this does not quantify a value for the subject property. The Board cannot base an assessment on these conclusions. It does not create a metric for assigning a value.
  - e) The Petitioner also offered photographs of the 2015 flooding that affected the subject properties, the existence of "concrete pads," and testimony regarding the town's 100 year old drainage system. But he failed to quantify how the flooding, the future possibility of flooding, or the existence of the concrete pads affected the market value-in-use. The Board accepts that a parcel subject to flooding is likely less valuable than a typical parcel. The question before the Board is how much. It is the

Petitioner's obligation to walk the Board through its case. *See Eckerling v. Wayne Twp. Ass'r*, 841 N.E.2d 674, 678 (Ind. Tax Ct. 2006).

- f) The Petitioner also pointed to what he views as inconsistent assessments of the subject parcels and three neighborhood properties. The Board finds that this does cast doubt on the assessment system in general. However, the value of the other properties is not before the Board.<sup>6</sup> As for the subject property, the burden is on the Petitioner to establish the correct value, not merely that the Respondent's mass appraisal system may be flawed.
- g) In that same vein, the Board finds the Petitioner's claim the assessments were inaccurate because they "dropped dramatically" between the initial assessment and the PTABOA determination to lack probative value as well. It is unclear if the Petitioner offered the assessment information to prove the subject parcels' assessments were in error, or instead to claim that he was entitled to an equalization adjustment based on a lack of uniformity and equality. In any event, the Petitioner failed to offer sufficient evidence on either point.
- h) The Petitioner offered appraisal reports performed by James E. Oswalt, a certified residential appraiser. An appraisal performed in conformance with generally recognized appraisal principles is often the preferred way to establish a prima facie case for a reduction in an assessment. *Meridian Towers*, 805 N.E.2d at 479.
- i) Mr. Oswalt settled on the following values for the subject properties:
- 1139 West Hancock was valued at \$ 1,000
  - 5966 North Lincoln was valued at \$2,500
  - 1119 West Hancock was valued at \$500
  - And the two lots located at 5969 North Lincoln had a combined value of \$1,500.

Unfortunately, Mr. Oswalt estimated the values as of April 29, 2016. As noted above, the valuation date for a 2015 assessment is March 1, 2015. Mr. Oswalt was not present to provide testimony to relate his valuation date back to the relevant valuation date of March 1, 2015. The Tax Court has clearly established that the evidence before the Board must indicate the value as of the valuation date. *Long*, 821 N.E.2d at 471; *Monroe Co. Ass'r v. Kooshtard Properties I, LLC*, 38 N.E.3d 754, 757 (Ind. Tax Ct. 2015). The Board has consistently found that appraisals

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<sup>6</sup> The Petitioner implicitly raises the issue of a lack of uniformity and equality in assessments. As the Tax Court explained in, *Westfield Golf Practice Center*, the focus of Indiana's assessment system has changed from the application of a self-referential set of regulations to a question of whether a property's assessment reflects the external benchmark of market value-in-use. *See, Westfield Golf Practice Center, LLC v. Washington Twp. Ass'r*, 859 N.E.2d 396, 398-99 (Ind. Tax Ct. 2007). One way to prove a lack of uniformity and equality under Article X, Section 1 of the Indiana Constitution is to present assessment ratio studies comparing the assessments of properties within an assessing jurisdiction with objectively verifiable data, such as sale prices or market value-in-use appraisals. *Id.* at 399 n.3. The taxpayer in *Westfield Golf Practice Center* lost its appeal because it focused solely on the base rate used to assess its driving-range landing area compared to the rates used to assess other driving ranges and failed to show the actual market value-in-use for any of the properties. *Id.* at 399. Petitioner did not make a showing for a change in assessment based on lack of uniformity and equality.

more than a year beyond the valuation date cannot establish a value under *Long*. See *SRW Investments LLC v. Clinton Co. Ass'r*, Pet. No. 12-021-10-1-5-00068 (July 17, 2014); *Patrick S. Hale & Barbara P Knights-Hale v. Stueben Co. Ass'r*, Pet. No. 76-017-07-1-5-0001 (December 19, 2011).

- j) Consequently, the Petitioner failed to make a prima facie case that the 2015 assessments are incorrect. Where the Petitioner has not supported its claim with probative evidence, the Respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### **Conclusion**

32. The Board finds for the Respondent.

### **Final Determination**

In accordance with these findings and conclusions, the 2015 assessments will not be changed.

ISSUED: December 6, 2016

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

### **- APPEAL RIGHTS -**

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.